



OREGON NATURAL DESERT ASSOCIATION  
(ON JUDICIAL REMAND)

185 IBLA 170

Decided November 25, 2014



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

OREGON NATURAL DESERT ASSOCIATION  
(ON JUDICIAL REMAND)

IBLA 2008-27-1

Decided November 25, 2014

Judicial remand of *Oregon Natural Desert Association*, 174 IBLA 341 (2008), for further adjudication consistent with the November 15, 2011, Opinion and Order issued by the U.S. District Court for the District of Oregon in *Oregon Natural Desert Association v. McDaniel*, No. 08-1271-KI, 2011 WL 5830435.

Decision affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness--  
Statutory Construction: Generally--Words and Phrases

Under the Steens Mountain Cooperative Management and Protection Act of 2000, 16 U.S.C. § 460nnn-23(c) (2006), the Secretary of the Interior is mandated to actively manage western juniper on a landscape level throughout the Steens Mountain Cooperative Management and Protection Area through the restoration of the historic fire regime, including use of natural and prescribed burning. A project that implements that mandate constitutes an administrative purpose that is “needed” within the meaning of § 460nnn-22(b)(2)(A). The exception contained in § 460nnn-22(b)(2)(B) is separate from, and does not limit, the scope of the administrative purposes exception contained in § 460nnn-22(b)(2)(A).

APPEARANCES: Peter M. Lacy, Esq., and Kristin F. Ruether, Esq., Portland, Oregon, for appellant; Bradley Grenham, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE ROBERTS

In a November 15, 2011, Opinion and Order (Remand Order) issued by the U.S. District Court for the District of Oregon in *Oregon Natural Desert Association (ONDA) v. McDaniel*, CV-08-1271-KI, 2011 WL 5830435, U.S. District Court Judge Garr M. King remanded one issue it found ONDA had raised, that the Board did not address in its decision in *ONDA*, 174 IBLA 341 (2008), *i.e.*, ONDA's argument that the off-road motorized use in wilderness study areas (WSAs) contemplated by the North Steens Ecosystem Restoration Project (Project) within the Steens Mountain Cooperative Management and Protection Area (CMPA) constitutes a violation of section 112(b) of the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act), 16 U.S.C. § 460nnn-22(b) (2006). Remand Order at 51-53. Based on the following analysis, we hold that the off-road motorized use to implement the Project does not violate the Steens Act, 16 U.S.C. §§ 460nnn--460nnn-122 (2006), and therefore affirm BLM's decision approving such use.

## BACKGROUND

The background of this case is set forth in extensive detail in the Board's decision in *ONDA*, 174 IBLA 341 (2008), and in the District Court's Remand Order. Thus, we summarize the facts insofar as they are relevant to the instant remand.

On September 28, 2007, the Burns (Oregon) District Office, Bureau of Land Management (BLM), issued a Record of Decision (ROD) approving the Project. The Project Area includes approximately 336,000 acres of public land in the CMPA. The Steens Act established the CMPA, which contains 496,136 acres of land, including 428,156 acres of public land, "to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations." 16 U.S.C. § 460nnn-12(a) (2006). Within the CMPA, the Steens Act created the Steens Mountain Wilderness Area.

The Steens Act directed BLM to prepare a management plan for the CMPA by October 30, 2004. 16 U.S.C. § 460nnn-21(b) (2006). To comply with this requirement, BLM completed the Andrews Management Unit/Steens Mountain CMPA Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (Project FEIS) in August 2004 (hereinafter CMPA PRMP/FEIS). On July 15, 2005, BLM issued an ROD adopting the final RMP (CMPA RMP). The CMPA RMP established three goals for woodlands: (1) maintain or improve ecological integrity of old growth juniper woodlands; (2) maintain, restore, or improve the ecological integrity of mountain mahogany and quaking aspen

stands/groves; and (3) manage woodland habitat so that the forage, water, cover, structure, and security necessary to meet the life history requirements of woodland-dependent and woodland-associated wildlife species are available on public lands. CMPA RMP at 28.

Following adoption of the Steens Mountain CMPA RMP, BLM prepared the Project FEIS to further the goals of the CMPA RMP and to address the Congressional mandate in section 113(c) of the Steens Act, 16 U.S.C. § 460nnn-23(c) (2006), directing the Secretary of the Interior to actively manage western juniper on a landscape level in the CMPA through “the restoration of the historic fire regime,” including “the use of natural and prescribed burning.” As BLM stated at page 23 of the FEIS, “[t]he North Steens Project is a landscape-level project, the goal of which is to reduce the juniper related fuel loading and improve the ecological health of the area by encouraging a healthy functioning ecosystem through appropriate land uses.” The Project is designed to decrease the effects of severe wildfires by reducing fuels and curtailing western juniper expansion in various types of sagebrush, quaking aspen, mountain mahogany, old-growth juniper, and riparian communities. ROD at 1.

In the FEIS, BLM analyzed six alternatives and selected the Preferred Alternative, which was adopted by BLM in the ROD. FEIS at 43-54. Under the Preferred Alternative, BLM would implement the Full Treatment Alternative, as described in the FEIS, in all portions of the Project Area, including WSAs, but excluding the Steens Mountain Wilderness Area. The Continuation of Current Management Alternative would be applicable to the Wilderness Area, which, according to BLM, means that “Project implementation is wholly excluded from designated Wilderness until future analysis and decision making is undertaken.” Response at 7.

ONDA challenged the ROD before the Board, asserting various inadequacies in the supporting documents. ONDA specifically challenged BLM’s approval of Project activities within WSAs. Finding that BLM committed no error in issuing the ROD, the Board affirmed BLM’s decision. *ONDA*, 174 IBLA at 343, 360.

ONDA appealed the Board’s ruling to District Court. Among other issues, the District Court considered ONDA’s assertion that the “[F]EIS permits cross-country vehicle use to access units and to carry out treatments in violation of the Steens Act.” Remand Order at 51. As noted, the District Court found that the Board had not addressed this specific legal issue and therefore remanded it to the Board for an initial ruling. We now consider the issue.

### *ANALYSIS*

The Steens Act required the establishment of a comprehensive travel plan for the CMPA. 16 U.S.C. § 460nnn-22(a) (2006). As BLM notes, the remand from the District Court focuses on section 112(b) of the Steens Act, 16 U.S.C. § 460nnn-22(b) (2006), which prohibits off-road motorized travel in the following terms:

(1) PROHIBITION.--The use of motorized or mechanized vehicles on Federal lands included in the Cooperative Management and Protection Act--

(A) is prohibited off road; and

(B) is limited to such roads and trails as may be designated for their use as part of the management plan.

(2) EXCEPTIONS.--Paragraph (1) does not prohibit the use of motorized or mechanized vehicles on Federal lands included in the Cooperative Management and Protection Area if the Secretary determines that such use--

(A) is needed for administrative purposes or to respond to an emergency; or

(B) is appropriate for the construction or maintenance of agricultural facilities, fish and wildlife management, or ecological restoration projects, except in areas designated as wilderness or managed under the provisions of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782).

We will refer to the exceptions embodied in subsections (b)(2)(A) and (B), respectively, as the “administrative purposes exception”<sup>1</sup> and the “ecological restoration exception.”

ONDA asserts that the administrative purposes exception is a general rule while the ecological restoration exception is a more specific and controlling rule, and that the Project is categorically governed by the more specific ecological restoration exception named “Ecosystem Restoration Project.” ONDA Motion for Summary

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<sup>1</sup> This administrative purposes exception is not unique to the Steens Act. Similar language appears in no less than 12 separate sections of Title 16 of the United States Code, spanning 11 Subchapters, and always providing parallel exceptions to prohibitions on off-road motorized use for administrative purposes and to respond to emergencies. 16 U.S.C. §§ 460ddd, 460ggg-3, 460mmm-4, 460nnn-22, 460ooo-4, 460ppp-3, 460sss, 460www, 460xxx, 460zzz-1, 539i, 539k.

Judgment (ONDA Motion) at 6-7. Thus, ONDA construes the statute as expressly allowing off-road motorized use on non-WSA lands while expressly disallowing it on WSA lands for purposes of the Project.

In response, BLM asserts that the administrative purposes exception is a different rule from the ecological restoration exception, even though the two rules may overlap. In its reading of the statute, BLM finds that the administrative purposes exception “concerns off road use that ‘is needed,’” whereas the ecological restoration exception “concerns off road use that is ‘appropriate.’” BLM Response on Remand (BLM Response) at 14. BLM states that administrative activities are “necessary,” whereas ecological restoration activities may be “appropriate and thus worth undertaking, though not strictly necessary.” *Id.* Because the Project “is needed,” BLM asserts that the administrative purposes exception allows off-road motorized use throughout the CMPA, including in WSAs, to complete the Project. BLM argues that the ecological restoration exception merely describes where off-road motorized use may take place when, for example, private parties undertake an ecological restoration project that warrants some off-road motorized use across public lands. BLM concludes that it “has determined that, in carefully prescribed circumstances, this off-road use is necessary in WSAs to administer the Steens Act juniper restoration provisions.”<sup>2</sup> *Id.* at 19.

[1] Under section 113(c) of the Steens Act, 16 U.S.C. § 460nnn-23(c) (2006), the Secretary of the Interior is mandated to actively manage western juniper on a landscape level throughout the CMPA through the restoration of the historic fire regime, including use of natural and prescribed burning. A project that implements that mandate constitutes an administrative purpose that is “needed” within the meaning of § 460nnn-22(b)(2)(A). The exception contained

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<sup>2</sup> The ROD approves the use of off-road motorized use in WSAs to implement the Project, characterizing it as “administrative use” that is needed under 16 U.S.C. § 460nnn-22(b)(2) (A) (2006). ROD at 24. In discussing the approval of the Project, BLM poses the question, “6. Does the alternative manage WSAs in a manner consistent with FLPMA as directed by the Steens Act (Section 603C WSA Management)?” *Id.* at 13. BLM’s answer is that it does, because among other things, “any off-way use of motorized vehicles or equipment will be the minimum necessary’ to meet project objectives for removal of juniper.” *Id.*

in § 460nnn-22(b)(2)(B) is separate from, and does not limit, the scope of the administrative purposes exception contained in § 460nnn-22(b)(2)(A).<sup>3</sup>

We conclude BLM properly included WSAs in the Project. ONDA, 174 IBLA at 352-54. BLM need not use the terms “needed” or “emergency” in the title of a program to qualify it under § 460nnn-22(b)(2)(A) when the primary purpose of the program is to address the mandate imposed upon the Secretary in § 460nnn-23(c) to actively manage western juniper on a landscape level in the CMPA through “the restoration of the historic fire regime,” including “the use of natural and prescribed burning.” For that reason, we hold that the administrative purposes exception allows BLM to engage in off-road motorized use in completing the Project throughout the CMPA, regardless of the WSA status of the land. In doing so, we reject ONDA’s characterization of the Steens Act as prohibiting all off-road vehicle use by BLM in WSAs merely because a program is named an “Ecosystem Restoration Project.”

BLM points out that “Congress chose the word ‘shall’ in section 113(c) and thus emphasized the mandate to undertake the juniper management on a landscape scale,” and that BLM has determined that in order comply with the mandate, “limited off-road vehicle travel in WSAs is necessary.” Response at 15. BLM asserts that to implement the section 113(c) mandate, “BLM expressly invoked the exception allowing for off-road travel for administrative purposes,” and “carefully limit[ed] any

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<sup>3</sup> At least one court has recognized that the administrative purposes of a Government agency in managing land includes fire suppression and fuels management. **Error! Main Document Only.** *Envtl Prot. Info. Ctr. v. U.S. Forest Serv.*, No. C-02-2708 JCS, 2003 WL 22283969 (N.D. Sept. 5, 2003), at \*6. Another court pointed to internal guidance of the National Park Service in defining allowable use of motorized and mechanized vehicles under the Wilderness Act, 16 U.S.C. § 1131-36 (2006):

The agency itself previously stressed the need to limit mechanized transport to administrative [] that promote wilderness values. See, e.g., National Park Service, *Reference Manual* 41 at 16-17 (“Administrative use of motorized equipment or mechanical transport will be authorized *only* if determined by the superintendent to be the minimum requirement needed by management to achieve *the purposes of the area as wilderness*, including the preservation *wilderness character and values*, or in emergency situations. . . .”) (emphasis added).

*Wilderness Watch and Pub. Employees for Env'tl. Responsibility v. Mainella*, 375 F. 3d 1085, 1094-95 (11th Cir. 2004).

motorized travel off ways in WSAs to the minimum necessary and provid[ed] for rehabilitation of any route used.” Response at 9-10.

BLM explains why off-road travel is essential in implementing section 113(c) of the Steens Act:

BLM utilizes piling and burning of cut trees in areas where broadcast burning is either not practical or where the results of broadcast burning would create undesirable post-fire effects. Declaration of Jeff Rose (March 30, 2012) at ¶ 2. Using motorized equipment to accomplish cutting and burning where necessary to protect sagebrush and sage-grouse is important to accomplishing the Project on a scale that will benefit the ecosystem. BLM needs the ability to, as a practical matter, stack and cut trees where necessary--including in WSAs. Piles of cut trees are burned in late fall, winter or early spring when the ground is frozen. *Id.* Machine piling is accomplished by using a tracked or wheeled implement, such as an excavator, with an articulating arm capable of grasping, lifting and placing a tree in a desired location. *Id.* at ¶ 3.

Response at 10. BLM concludes that “the ability to use motorized equipment off ways in WSAs to accomplish cutting and burning where necessary is important to accomplishing the Project on a scale that will benefit the ecosystem and to carry out section 113(c) of the Steens Act which requires active management of Western Juniper on a landscape level.” *Id.* at 12.

BLM properly argues that “ONDA would have the Board implicitly modify the express exception for off-road travel for administrative purposes in section 112(b)(2)(A) and, in so doing, limit BLM’s ability to carry out the legislative mandate of section 113(c) in WSAs.” Response at 15. ONDA’s construction of section 113(c) would “constrain[] BLM’s ability to undertake necessary off-road travel in WSAs.” *Id.* Subsection (A) of section 112(b)(2) governs one topic: “off-road use ‘needed’ for BLM administrative and emergency use--while subsection (B) governs the separate topic of “general motorized use ‘appropriate’ for certain types of projects.” *Id.* at 18. We agree with BLM that “[t]he plain language of 16 U.S.C. § 460nnn-22(b)(2)(A) authorizes BLM to use motorized or mechanized vehicles off-road on Federal lands in the CMPA if BLM determines that such use is needed for administrative purposes.” *Id.* at 19. BLM properly states that

[s]ubsection (B) does indeed provide for an exception to the prohibition on off-road travel outside WSAs for a range of parties who may be



engaging in activities such as ecosystem restoration, but this does not change subsection (A) which provides for BLM administrative use--which necessarily includes administration of the Steens Act mandate to conduct juniper treatment on a landscape scale--off road.

*Id.*

In *ONDA*, 174 IBLA at 352-53, the Board rejected ONDA's argument that the Project would impair<sup>4</sup> nearly 80,000 acres of WSA lands. Specifically, the Board found that the Project is needed for the preservation of wilderness characteristics of WSA lands:

In this case, the Project involves active management in WSAs due to the unnatural build-up of juniper, which poses a threat to ecological values. ROD at 17. BLM has explained that, without treatment, the ecological health and diversity in WSAs are likely to decline as a result of juniper expansion. ROD at 17; FEIS at 193. The Project is designed to restore an historic fire regime in the CMPA, as required by section 113(c) of the Steens Act, 16 U.S.C. § 460nnn-23(c) (2000), through the active management of juniper on a landscape level. While BLM concedes that the Project may result in some short-term impact to wilderness values, these values will be enhanced in the long term (many years to decades) by helping to restore a more natural fire regime and limit juniper expansion to its historic range. FEIS at 15, 193. Without active treatment, "[s]ome wilderness values could decline in areas where juniper expansion continues to the point native shrubs and grasses are suppressed or lost, especially if large, stand-replacing wildfires occur." FEIS at 15. It is clear from the FEIS that BLM thoroughly analyzed the effects to wilderness values of taking action and failing to take action. *Id.* at 177-82.

. . . .

While ONDA asserts that the Project violates the guidelines set forth in the IMP, the IMP permits "[u]ses and facilities that clearly

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<sup>4</sup> BLM's management of lands in the CMPA is governed by the Interim Management Policy for Lands Under Wilderness Review (IMP), H-8550-1 (July 7, 1995), which provides criteria for ensuring that no activity will occur that will jeopardize or negatively affect Congress' ability to find that a WSA has the necessary wilderness characteristics. See *Committee for Idaho's High Desert*, 139 IBLA 251, 253 (1997).

protect or enhance the land's wilderness values or that are the minimum necessary for public health and safety in the use and enjoyment of the wilderness values." IMP, H-8550-1, Chap. I.B.2. Further, "[a]ctions that clearly benefit a WSA's wilderness values through activities that restore, protect, or maintain these values are allowable." H-8550-1, Chap. I.B.6. Prescribed fires, which are the primary focus of the Project in WSAs, are allowed by the IMP, which provides that "[p]rescribed burning may be used where necessary to maintain fire-dependent natural ecosystems." H-8550-1, Chap. III.C.2. BLM emphasizes that juniper cutting, to which ONDA objects, will be used only if prescribed fire alone does not meet the Project's objectives following a 3-to 5-year interval Project review. ROD at 2.

174 IBLA at 353-54.

### *CONCLUSION*

We conclude that the exception stated in section 112(b)(2)(A) of the Steens Act, 16 U.S.C. § 460nnn-22(b)(2)(A) (2006), authorizes BLM to use motorized or mechanized vehicles off-road on Federal lands in the CMPA, including WSAs, if BLM determines that such use is needed for administrative purposes.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

\_\_\_\_\_/s/  
James F. Roberts  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
Christina S. Kalavritinos  
Administrative Judge